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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes on his mission to Germany: comments by the State*

* Reproduced as received.

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1. Germany thanks the Special Rapporteur for presenting his report. The Federal Government would like to make the following remarks.

2. The government notes that the following comments refer to the report of the Special Rapporteur of 29 of August 2016. The remarks to the report are partial; they do not cover the entirety of the subjects covered in the report.

II. Comments on the legal framework and the report's implementation

A. Industrial Chemicals

17. In general the proposal can be generated by the Member State authorities and ECHA, under certain conditions. Industry can also deliver proposals for harmonized classification.

19. The German Ministry of Environment has taken a study on its own initiative, which documented that it remains to be clarified for the vast majority of high tonnage substances in the EU whether sufficient information on prenatal developmental toxicity and toxicity for reproduction is available.

The mentioned study showed the following:

- No data for reproductive toxicity were available for 11% of the high tonnage substances.
- For 73% of the substances the requirements were adapted (= justified data waiving or other than standard data). This data may deliver sufficient information on reproductive toxicity/developmental toxicity. However, this evaluation will only be performed in the future and is currently not known.
- 5% of the data were available in clear compliance with REACH (= study according to the correct international guideline with the actual substance).

Therefore, it may be misleading to say that only 5% of the substances have the information required as for further 73% this may be the case (cf. page 92 in the study report https://www.umweltbundesamt.de/publikationen/reach-compliance-data-availability-of-reach).

C. Energy production

42. The *Energiewende* can only be successful if the energy from renewable sources remains affordable to final consumers and if it doesn't hamper the international competitiveness of German businesses. Hence, wind power and solar power will become the most important energy sources.

43. The existing technological options for the generation, storage and distribution of renewable energy are sufficient to reach the ambitious targets of the Energiewende. Nevertheless, the German government supports of research and development activities in this field as there is always room for improvement.

F. Shipbreaking

Germany remarks that no meeting took place between the Special Rapporteur and the German Ship Owners' Association and the Federal Ministry of Transport.

55. The claim that German ship owners, in 2014, sold a record high of 95% of their end-of-life tonnage for substandard breaking on the beaches of South Asia, is questionable. It remains unclear how many ships are taken into consideration, and how a German-owned ship was defined. Normally ships from German owners are being sold into the second market. Ships from German owners are in general too young for scrapping.

With regard to working conditions and environmental conditions prevailing in many shipbreaking yards, as reported by the Special Rapporteur, Germany notes that this was the reason why the Hong Kong International Convention for safe and environmentally sound recycling of ships (HKC) was negotiated and agreed upon in 2009. Until today there are 4 parties to this convention.

56. Germany led a very active role on the development of the Hong Kong Convention (HKC) of 2009. The HKC will be legally binding if it comes into force.

It should be noted that no o ship can be detained to leave a port if there is no information that this ship is waste. It should also be stated that the Basel Convention does not apply if ships become waste on the high sea and the Convention is therefore not workable for ship recycling.

57. As regards the deliberations at Basel level on the equivalent level of control and enforcement between the Basel and Hong Kong conventions, see http://www.basel.int/Implementation/ShipDismantling/LegalAspects/Overview/tabid/2766/Default.aspx.

G. International Trade & deregulatory pressures

59. The German government highlights the importance of the EU environmental standards, which must not be lowered by the envisaged TTIP's regulatory objectives. The current proposals are still being evaluated.

III. Initiatives for stronger protection of human rights

B. Public participation in decision-making

75. REACH processes are also highly transparent. In fact, all processes leading to risk management foresee public consultations; stakeholders may participate as observes in the ECHA committee meetings when hazards and risks are assessed. The final outcome of the assessments and responses to all comments received during public consultation are published.

C. The right to an effective remedy

77. In Germany, the statute of limitations to access a remedy for environmental harm is three years, starting with the knowledge of damage, 10 years without such knowledge as far as it concerns damage to property and 30 years without such knowledge as far as it concerns personal injury.

IV. Issues in focus – domestic concerns

A. Child and adult exposure to toxics

91. Germany protects and fulfils the right of the child to health and has an effective legal framework for protecting the young and promoting their welfare. Germany's universal health care system provides coverage for all children who reside in Germany.

95. It is important to note that the Toy Safety Directive requires manufacturers to make sure that toys are manufactured in accordance with all safety requirements and that there is no risk of adverse effects on human health due to exposure to chemicals which toys contain (Dir. 2009/48/EC Art. 4 (1), Art. 10, Annex II particular safety requirements, Part III chemical Properties (1)) (BfR). Generally the manufacturer has to declare that each toy is compliant with the safety requirements of the Toy Safety Directive by a CE mark before placing it on the market, including a safety assessment of potential exposure to chemical hazards. Not all risks or safety requirements are addressed in the EU-standards.

97. Hazardous substances like CMRs in toys may result in health risk to children, because although the use is banned, by the way of derogation residue levels for human carcinogens up to the classification limits of mostly 0.1% (based on the CLP- regulation 1217/2008) are allowed.

Endocrine active phthalate softeners are forbidden in toys by REACH-regulation for years. Furthermore the flame retardants TCEP, TCPP and TDCP are forbidden in toys for children below the age of 3 years, this includes teddy bears. Moreover it should be noted that Formaldehyde is forbidden because it is carcinogen cat. 1B; it causes cancer only by inhalation and not by dermal exposure.

B. Risk assessment processes

Chemical Mixtures

103. In REACH, endocrine disrupting chemicals are considered of similar regulatory concern as CMR-, PBT- or vPvB-substances and thus are also regarded as "Substances of Very High Concern" (article 57f). It should be noted that for endocrine disruptors there is a need to demonstrate equivalent level of concern (compared to CMR, PBT and vPvB) before they can be included on the candidate list.

106. In this area, the Federal Institute for Risk Assessment conducted wide-ranging activities in 2015 and 2016 in order to avoid further delays in the formulation of scientific criteria for the identification of EDs by the Commission; Commissioner Andriukaitis explicitly thanked the Federal Institute for Risk Assessment for these efforts.